



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 - 740
Regulation title	Adult Protective Services
Action title	Technical Amendments
Document preparation date	April 14, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed amendments update guidelines used by local departments of social services for investigating reports and protecting the health, safety and welfare of the elderly and adults. Proposed changes are primarily technical in nature to make the regulation consistent with the Code of Virginia and current policy, update names of agencies, and delete obsolete terms. The regulation provides guidance and expectations relative to 1) the receipt, investigation and disposition of reports of adult abuse, neglect and exploitation and 2) the provision of services to adults found to need protection.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services approved the final action on 22 VAC 40-740, Adult Protective Services, on April 14, 2004.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Federal authority is found in Title XX of the Social Security Act, Section 2001, number (3). The State statute providing the mandate for this regulation is found in the *Code of Virginia*, § 63.2-217 and § 63.2-1610.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Amendments to this regulation are necessary to bring it into compliance with sections of the *Code of Virginia* that are already changed. Provisions in this regulation are essential to protect the health, safety and welfare of the elderly and adults with disabilities.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The major changes are technical in nature and not substantive, including language changes to bring the regulation into compliance with current *Code* language, the updating of several State agency names, and deleting outdated terminology. In addition, *Code* references are updated in response to October 2002's recodification of the Social Services section of the *Code* where § 63.1 was repealed and replaced by § 63.2.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantage to making these changes is to bring the regulation into compliance with previously promulgated changes. Recipients of services provided through this regulation, the agency and the Commonwealth benefit because vital adult protective services are provided in a consistent manner across the state. There are no disadvantages to the public or Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
10.	Definition of Adult protective services	Reference to “public welfare,” has been deleted. This is a technical change to make the definition consistent with that for “Director.”
50.D. & E.	Disclosure of information	Local “agency” is replaced with “department.” These are technical changes to make the references consistent with the remainder of the regulation.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

No comments received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Part I, Definitions		The terms “committee” and “public welfare” are used.	The terms “guardian” and “conservator” replace “committee.” “Departments of public welfare or social services” is changed to “departments of social services.” The changes comply with previous <i>Code</i> changes.
22 VAC 40-740-40		The phrase “reason to suspect” is used.	If there is no “preponderance of evidence,” then the complaint is considered

Dispositions and 22 VAC 40-740-60 Services Provided			unfounded. Changing “reason to suspect” brings Adult Protective Services’ standards of evidence in line with that used by Child Protective Services.
22 VAC 40-740-50 Disclosure of Adult Protective Services Information		State agency names and act names that are no longer used are in the regulation. Current language refers to regional offices.	<p>Change several State agencies’ names to reflect current nomenclature (i.e., “Department for Rights of Virginians with Disabilities” is now the “Virginia Office for Protection and Advocacy;” the Division of Licensure and Certification of the Department of Health is now “the Center for Quality Health Care Services and Consumer Protection;” and the Office of the State Long-Term Care Ombudsman is no longer within the Department for the Aging, but a stand-alone entity. References to “central” or “regional” offices of the Department are eliminated to reflect current restructuring.</p> <p>Change “Privacy Protection Act” found at § 2.1-332 to the “Government Data Collection and Dissemination Practices Act” at § 2.2-3800 of the <i>Code of Virginia</i> to comply with the act’s name change.</p>
Throughout the text		Outdated language is used. <i>Code</i> references are ones in use prior to October 1, 2002, when § 63.1 was recodified to § 63.2.	<p>“Local agency” is changed to “local department” to reflect current practice when referring to local departments of social services.</p> <p>“Client” is changed to “adult” to reflect recent policy changes.</p> <p>References to § 63.1 of the <i>Code of Virginia</i> are changed to their corresponding citations in the recodified § 63.2.</p>

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Local departments of social services receive and investigate more than 10,000 reports of adult abuse, neglect, and exploitation annually. Adult protective services is the only program authorized by the *Code of Virginia* (§ 63.2-1607) to investigate suspected abuse, neglect, and exploitation across all care settings. Reports alleging that adults are abused, neglected, or exploited, or are at risk of abuse, neglect, or exploitation and are unable to protect their own interests due to vulnerability associated with incapacity or due to a mental or physical disability are investigated. Services are provided to those adults who are found, through an APS investigation, to require protective services.

